

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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EMPIRE STATE CARPENTERS WELFARE, PENSION,
ANNUITY, APPRENTICESHIP, CHARITABLE TRUST,
LABOR MANAGEMENT COOPERATION, and
SCHOLARSHIP FUNDS and their BOARDS OF TRUSTEES,

ORDER
10-CV-3161 (ADS) (ETB)

Plaintiffs,

-against-

BLACK DIAMOND CONSTRUCTION, INC.,

Defendant.

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APPEARANCES:

Levy Ratner P.C.

Attorneys for the plaintiffs

80 Eight Avenue

8th Floor

New York, NY 10011-5126

By: Owen M. Rumelt, Esq., Of Counsel

NO APPEARANCE:

Black Diamond Construction, Inc.

SPATT, District Judge.

On July 12, 2010, the plaintiffs commenced this action against the defendant, pursuant to Section 502 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132, and Section 301 of the Labor Management Relations Act of 1948 (“LMRA”), 29 U.S.C. § 1391. On March 21, 2011, the Clerk of the Court noted the default of the defendant. On October 12, 2011, the plaintiffs moved for default judgment and on October 21, 2011, the Court referred the matter to United States Magistrate Judge E. Thomas Boyle for a

recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorney's fees and costs.

On September 24, 2012, Judge Boyle issued a Report and Recommendation (the "Report") recommending that the plaintiffs' motion for a default judgment be granted, that the plaintiffs' motion for injunctive relief requiring the defendant to submit to and bear the costs of an audit be granted, that the plaintiffs' motion for injunctive relief requiring the defendant to submit any unpaid and unreported contributions together with interest and liquidated damages thereon be granted, and that the plaintiffs be awarded damages as follows: (1) attorney's fees in the amount of \$2,708.50 and (2) costs in the amount of \$475.54, for a total monetary award of \$3,184.04, plus additional pre-judgment interest. (Report at 6.) To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Boyle's Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Boyle's Report, it is hereby

ORDERED, that Judge Boyle's Report and Recommendation is adopted in its entirety. The Court grants the plaintiffs' motion for a default judgment; grants the plaintiffs' motion for injunctive relief requiring the defendant to submit to and bear the costs of an audit; and grants the plaintiffs' motion for injunctive relief requiring the defendant to submit any unpaid and

unreported contributions together with interest and liquidated damages thereon. In addition, the Court awards the plaintiffs: (1) attorney's fees in the amount of \$2,708.50 and (2) costs in the amount of \$475.54, for a total monetary award of \$3,184.04, plus additional pre-judgment interest. and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of the plaintiffs as set forth above, and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
October 26, 2012

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge